

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILLIS JOHN YAZZIE, SR.,

Petitioner,

v.

Civ. No. 14-894 JB/GBW

Cr. No. 10-1761 JB

UNITED STATES OF AMERICA,

Respondent.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER is before the Court on Petitioner's Motion for COA (*doc. 60*) and Respondent's Response thereto (*doc. 61*).¹

On April 28, 2022, a final judgment was entered dismissing Petitioner's claims with prejudice. *Doc. 52*. On June 2, 2022, Petitioner filed a motion for reconsideration of the final judgment. *Doc. 53*. On June 7, 2022, the United States filed its response to the motion for reconsideration. *Doc. 54*. On July 11, 2022, United States Magistrate Judge Carmen E. Garza issued proposed findings and a recommended disposition ("PFRD"). *Doc. 55*. In summary, Judge Garza recommended that Petitioner's Motion for Reconsideration be denied and that the Court decline to issue a certificate of appealability. *Id.* On July 27, 2022, Petitioner objected to the PFRD. *Doc. 56*. The

¹ Petitioner designated his filing as being made in a different civil case he has brought in this district – Civ. No. 18-206 JB – and, thus the filing and response were docketed in that case. Upon review, it is clear that the ruling he seeks to appeal is in the instant case. Consequently, the undersigned has stricken the filings from the incorrect docket and directed their filing here. See Minute Order, *Yazzie v. United States*, CIV No. 1:18-206 JB/GBW, *doc. 10* (D.N.M. Jan. 5, 2024).

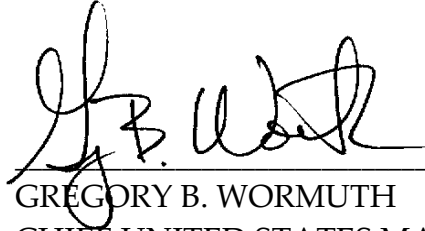
United States responded to those objections on July 28, 2022. *Doc. 57*. On October 3, 2022, prior to any ruling by the District Judge on the PFRD and Petitioner's objections, Petitioner filed the instant motion seeking a certificate of appealability. *See* Motion for COA, *Yazzie v. United States*, CIV No. 1:18-206 JB/GBW, *doc. 4* (D.N.M. Oct. 3, 2022) (stricken and docketed in instant case by Court on January 5, 2024).

To obtain a certificate of appealability, the movant must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). In this circumstance, Petitioner cannot meet the second prong because the district court has not made a ruling. Judge Garza's filing proposed findings and recommended a disposition pursuant to 28 U.S.C. § 636(b)(1)(C). *See doc. 55*. She did not rule on Petitioner's motion. Instead, after considering her recommendations, the District Judge must make a *de novo* determination on the motion after considering any objections from the parties. *See* 28 U.S.C. § 636(b)(1)(C). When Petitioner filed the instant motion, the District Judge had not, and has not yet, made that determination. As such, there is no "ruling" for Petitioner to appeal. Thus, his motion for a certificate of appealability is not ripe and should be denied.

Nonetheless, one of Judge Garza's recommendations in the PFRD is that the "Court DECLINE to issue a certificate of appealability." *Doc. 55* at 4. Should the District Judge agree that Petitioner's Motion for Reconsideration should be denied, the

undersigned recommends that the instant motion be construed as an objection to Judge Garza's recommendation regarding the certificate of appealability.

The undersigned therefore RECOMMENDS that Petitioner's Motion for COA (*doc. 60*) be DENIED. The undersigned further RECOMMENDS that the instant motion be CONSTRUED as an objection to the PFRD (*doc. 55*).



GREGORY B. WORMUTH
CHIEF UNITED STATES MAGISTRATE JUDGE

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.